



**FIRE**  
Foundation for Individual  
Rights and Expression

July 6, 2023

Via CM/ECF

Mark J. Langer, Clerk of Court  
United States Court of Appeals  
For the District of Columbia Circuit  
333 Constitution Ave., NW  
Washington, DC 20001

Re: *Woodhull Freedom Foundation v. United States*, No. 22-5105

Dear Mr. Langer,

Pursuant to Federal Rule of Appellate Procedure 28(j), Appellants hereby respond to the government's submission of supplemental authority, citing *United States v. Hansen*, 2023 WL 4138994 (2023).

The government cited *Hansen*'s holding that the terms "encourage" or "induce" as used in the Immigration and Nationality Act ("INA") should be interpreted in their "specialized, criminal-law sense" to mean aiding and abetting, and when so interpreted the law reaches only speech integral to criminal conduct. The government suggests the same principles support affirmance in this case. That conclusion is unwarranted.

First, the government's conclusion overlooks major differences between the specific language of FOSTA and the INA. The Court observed that the INA provision at issue in *Hansen* "encompasses a great deal of nonexpressive conduct," including smuggling, providing counterfeit immigration documents, and issuing counterfeit Social Security numbers as examples of "heartland . . . prosecutions." 2023 WL 4138994 \*3. FOSTA, by contrast, does not specify any *actus reus* other than "own[ing], manag[ing], or operat[ing] an interactive computer service," which means it reaches *only* expressive conduct. Appellant's Reply at 10-11. This issue was discussed extensively at oral argument. Tr. 9-10, 20-22, 43-46, 48-49, 58-61.

Second, the specific question in *Hansen* was "whether Congress used 'encourage' and 'induce' [in the INS] as terms of art." 2023 WL 4138994 \*5. Under its reasoning, even if the term "facilitates" is interpreted to mean "aiding and abetting," it does not apply to FOSTA, which includes the additional disjunctive term "promote," which is capable of multiple and wide-ranging meanings.

Mark J. Langer, Clerk of Court

July 6, 2023

Page 2 of 3

Appellant's Br. 31-32; Appellant's Reply 9. This distinction also was addressed at oral argument. Tr. 29-30, 53, 55.

Third, the Court in *Hansen* made clear that “ordinary principles of interpretation apply,” 2023 WL 4138994 \*10 n.3, which, in the case of FOSTA, should include the *noscitur a sociis* canon. Appellants’ Br. 29; Appellant’s Reply 6-8; Tr. 12, 20, 33-34, 70-71. Accordingly, the Court’s analysis of the INA in *Hansen* does not control interpretation of FOSTA’s different statutory framework.

Respectfully submitted,

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Mark J. Langer, Clerk of Court

July 6, 2023

Page 3 of 3

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